

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Mediacom California LLC	)	CSR-6222-A
	)	
For Modification of the Los Angeles, California DMA	)	
	)	
KVMD Licensee Co., LLC	)	CSR-6204-M
v.	)	
Mediacom California LLC	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 7, 2003**

**Released: November 14, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom California LLC (“Mediacom”), filed the above-captioned petition for special relief seeking to modify the Los Angeles, California designated market area (“DMA”) with respect to television broadcast station KVMD, Twentynine Palms, California (“KVMD”). Specifically, Mediacom requests that KVMD be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable systems serving 19 communities in the Los Angeles DMA.<sup>1</sup> KVMD Licensee Co., LLC, licensee of KVMD, filed an opposition to the petition to which Mediacom replied. In an associated filing, KVMD filed a must carry complaint against Mediacom for its failure to carry its signal on cable systems serving nine of the referenced communities.<sup>2</sup> Mediacom filed an opposition to this complaint to which KVMD replied. We are consolidating these cases in order to determine the signal carriage rights of KVMD on the cable systems in question. For the reasons stated below, we grant Mediacom’s petition for special relief and dismiss KVMD’s carriage complaint.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Act and the rules adopted by the Commission in

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<sup>1</sup>The subject communities are: Sun City, Menifee, Trona, Pioneer Point, Argus, Westend, Ridgecrest, Kernville, Inyokern, Bodfish, Lake Isabella, Wofferd Heights, Mountain Mesa, South Lake, Belle Vista, Weldon, Onyx, China Lake and China Lakes NWC, California.

<sup>2</sup>Those communities are China Lakes NWC, Inyokern, Ridgecrest, Argus, Pioneer Piont, Trona, Westend, Sun City and Menifee, California.

*Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.<sup>3</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Each county in the United States is assigned to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

3. Under the Act, however, the Commission is directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

... with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section.<sup>6</sup>

In considering such requests, the 1992 Cable Act provides that:

... the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>7</sup>

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<sup>3</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>4</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

<sup>5</sup>For a more complete description of how counties are allocated, see Nielsen Media Research’s *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>6</sup>47 U.S.C. § 534(h)(1)(C).

<sup>7</sup>*Id.*

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

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[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>8</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>9</sup>

4. In the *Market Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>10</sup>

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<sup>8</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>9</sup>*Must Carry Order*, 8 FCC Rcd at 2977 n.139.

<sup>10</sup>The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

- (C) Available data on shopping and labor patterns in the local market.
- (D) Television station programming information derived from station logs or the local edition of the television guide.
- (E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.
- (F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>11</sup>

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee. The *Market Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

5. In *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, a digital-only television station has mandatory carriage rights, and amended the rules accordingly.<sup>12</sup> The Commission has established a framework for analyzing market modifications for digital television stations.<sup>13</sup> The Commission stated that Nielsen’s market designations, publications, and assignments for the analog television market should continue to be binding on broadcast stations transitioning to digital television broadcasting. The presumption is that the market of the station’s digital signal is coterminous with the station’s market area for its analog signal during the transition period.<sup>14</sup> The Commission also found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, will be applicable to digital television modification petitions during the transition period when television stations broadcast both an analog signal and a digital signal.<sup>15</sup> The Commission recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of the analog television signal. Therefore, in deciding DTV market

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<sup>11</sup>47 C.F.R. § 76.59(b).

<sup>12</sup>See 16 FCC Rcd 2598, 2606 (2001); 47 C.F.R. § 76.64(f)(4). The Commission has held that a television station may elect to have its digital signal carried in an analog format by local cable systems. The Commission concluded that for purposes of supporting the conversion to digital signals and facilitating the return of the analog spectrum, a television station may demand that one of its high definition digital (“HDTV”) or standard definition digital (“SDTV”) television signals be carried on the cable system for delivery to subscribers in an analog format. *DTV Must Carry Report and Order*, 16 FCC Rcd at 2630.

<sup>13</sup>See *Id.* at 2635-36.

<sup>14</sup>We note that in adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to insure that a station’s digital over-the-air coverage area would replicate as closely as possible its current over-the-air analog coverage area. See *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

<sup>15</sup>See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

modification cases, the Commission stated that it would take into consideration changes in signal strength and technical coverage because of new digital television channel assignments and power limits. It concluded that all other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.<sup>16</sup>

### III. DISCUSSION

6. KVMD states that it is an authorized full service digital UHF station whose city of license is Twentynine Palms, California, a community located in San Bernadino County, California.<sup>17</sup> KVMD further states that its DTV facility is authorized to broadcast on Channel 23 and commenced operations, pursuant to special temporary authority, on July 29, 2002. KVMD adds that on June 3, 2003, it discontinued analog operations, and commenced digital-only operations, pursuant to Commission authorization.<sup>18</sup> KVMD states that the Station and Mediacom's cable systems are both located in the Los Angeles DMA. KVMD states that by certified letters dated May 5, 2003, it elected and sought mandatory carriage on Mediacom's cable systems. The Station asserts that Mediacom did not respond directly to KVMD's correspondence with regard to one system and, for the other, contended that KVMD did not provide a good quality signal. Simultaneously with its opposition to the complaint, on July 22, 2003, Mediacom filed a petition for special relief seeking modification of KVMD's market. Mediacom's market modification arguments are set forth below.

7. **History of carriage.** Mediacom asserts that KVMD's digital signal has no history of carriage on its cable systems.<sup>19</sup> Mediacom notes that KVMD's analog signal also did not have a history of carriage despite being on-the-air for a period of nearly five years. In its response, the Station asserts that two other cable operators, Adelphia Communications ("Adelphia") and Charter Communications ("Charter") have "understandings" with KVMD to carry its signal on their respective cable systems in the Los Angeles DMA.<sup>20</sup> According to KVMD, Adelphia already serves two communities, Hemit and Perris, that are in close geographic proximity to Mediacom's cable system serving Sun City and Menifee.<sup>21</sup> Mediacom asserts that its decision to seek modification of KVMD's market was predicated on the Station's lack of nexus to the cable communities, a circumstance that is unaffected by proposed carriage of KVMD by other operators in the market.<sup>22</sup>

8. **Local Service.** Mediacom asserts that KVMD fails to provide any coverage or local service to the subject communities.<sup>23</sup> Mediacom provides evidence showing that Menifee, at 69 miles away, is the closest cable community to Twentynine Palms, while Kernville, at 174 miles away, is the farthest cable community from the Station's city of license.<sup>24</sup> Mediacom states that it performed two

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<sup>16</sup>*Id.*

<sup>17</sup>Twentynine Palms is on the eastern edge of the Los Angeles DMA.

<sup>18</sup>KVMD Must Carry Complaint at 2, citing *KVMD(TV), Twentynine Palms, CA*, DA 03-1481 (rel. May 1, 2003).

<sup>19</sup>Modification at 4.

<sup>20</sup>Opposition at 7 and Exhibit C.

<sup>21</sup>*Id.* at Exhibit D.

<sup>22</sup>Reply at 3.

<sup>23</sup>Modification at 5.

<sup>24</sup>*Id.* at 6-7.

separate technical analyses to measure the Station's reach. It asserts that, using an interference analysis, KVMD fails to deliver an interference-free digital signal to any of the cable communities except Sun City and Menifee.<sup>25</sup> Mediacom asserts that a Longley-Rice propagation study of KVMD's technical coverage indicates that terrain features, such as the Pluto Mountains, restricts KVMD's technical service area.<sup>26</sup> According to Mediacom, the Longley-Rice study supports the findings of its standard technical service study with both showing that only two communities are able to receive KVMD's digital signal.

9. In response, KVMD states that, under standards developed by the Commission in the analog context, Grade B coverage has generally been held to demonstrate a station's service to cable communities and to reflect a station's natural geographic market.<sup>27</sup> KVMD states that, as demonstrated by Mediacom's engineering showing, the communities of Sun City and Menifee are well within KVMD's digital service contour and receive a digital signal according to Longley-Rice.<sup>28</sup> KVMD argues, therefore, that Mediacom's claim that the presence of the San Bernardino Mountains between Twentynine Palms and Sun City and Menifee precludes any nexus is unsupported. KVMD maintains that a further indication that Sun City and Menifee are within its market is the fact that Adelphia has agreed to carriage on its system serving the adjacent communities of Hemet and Perris, California.<sup>29</sup> With regard to the remaining communities, although KVMD concedes that it does not provide digital service and the distances are greater, it commits to provide 41 dBu signal strength coverage to the cable communities.<sup>30</sup> KVMD adds that analog-based contour and distance concepts are poorly suited to the propagation of digital signals which are subject to the "cliff effect."<sup>31</sup> KVMD urges the Commission to replace contour and distance standards with a good quality signal rule, that is, if a digital station is able to deliver a good quality signal to the cable operator's headend, it should qualify for carriage.<sup>32</sup>

10. Mediacom asserts that KVMD does not carry any news, public affairs or public service programming and does not broadcast programming of specific interest to residents of the cable

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<sup>25</sup>*Id.* at 5 and Exhibit B. In this analysis, Mediacom states that it adopted the Commission's traditional method of using average elevation data from 3.2 to 16.1 km at ten degree intervals beginning at true north based on NGDC 3-second computerized terrain database. See Modification at Exhibit B (Engineering Report). Mediacom notes that KVMD's digital transmitter site is located on the far side of the Pluto Mountains, the San Bernardino Mountains, the Bullion Mountains, the Antelope Valley and the Mohave Desert from the Ridgecrest cable system, and the Santa Rosa Mountains, the Lakeview Mountains, the Pinto Mountains, the San Bernardino National Forest and the Joshua Tree National Park from the Sun City cable system.

<sup>26</sup>Mediacom states that the propagation evaluation program was accessed by using the U.S. Department of Commerce TA Service of the Telecommunications Engineering, Analysis and Modeling Division, Boulder, CO. See Modification at Exhibit B (Engineering Report).

<sup>27</sup>Opposition at 8, citing *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598, 2977 (2001); see also 47 C.F.R. § 73.622(e).

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* At 9.

<sup>31</sup>*Id.* at 9-10. The Commission has explained the cliff effect in its *DTV Must Carry Report and Order*. If a digital signal is received, a good quality picture can be constructed at the television receiver; however, once the signal falls below a minimum signal threshold, no picture can be reconstructed or displayed by the television receiver. See 16 FCC Rcd at 2617 n.131

<sup>32</sup>*Id.* At 10-11.

communities.<sup>33</sup> KVMD counters that its programming has a “distinct nexus” to the cable communities at issue, particularly Sun City and Menifee.<sup>34</sup> It asserts that it carries a substantial amount of programming about horses and that there are many horse enthusiasts throughout the Los Angeles DMA.<sup>35</sup> KVMD also states that it carries informational and “inspirational” local programming such as “Working Wardrobe,” “This Week in Garden Grove,” “City Beat,” “Inland Empire Alive” for people living in San Bernadino and Riverside Counties.<sup>36</sup> KVMD adds that it expects to launch a new locally produced news program directed at viewers in San Bernadino, Riverside, Orange, and Los Angeles Counties. Mediacom asserts that KVMD has not provided sufficient evidence in the record to support its claim that the Station’s programming serves the interests of viewers in the cable communities.<sup>37</sup> Mediacom also argues that there are no economic, shopping or labor connections between KVMD and the communities due to the geographic attenuations between Twentynine Palms and the communities.<sup>38</sup>

11. **Carriage of other local television stations.** Mediacom asserts that it carries Los Angeles television stations that cover news, sporting events, and issues of concern to the cable communities.<sup>39</sup> KVMD states that Mediacom has made no showing that it currently carries any broadcast television station that offers the unique programming provided by KVMD, or that promises to deliver the multicultural news and community interest stories that the Station plans to offer in the near future.<sup>40</sup>

12. **Viewing patterns.** Mediacom asserts that KVMD’s signal failed to achieve reportable off-air viewing in Los Angeles County, Orange County, or remote areas of San Bernadino County.<sup>41</sup> Mediacom asserts that the dearth of viewers is consistent with the absence of technical and programming service to the cable communities. KVMD argues that it should be treated as a new station for market modification purposes because it is under new ownership and because it is a new digital-only station.<sup>42</sup> Based on these facts, KVMD states that viewership levels should not be accorded substantial weight in this proceeding.

13. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station’s market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market.<sup>43</sup> Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism by taking such matters into account.<sup>44</sup> These principles apply to all television stations without regard to the mode in which the station

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<sup>33</sup>Reply at 6.

<sup>34</sup>Opposition at 12 and Exhibit E.

<sup>35</sup>*Id.*

<sup>36</sup>*Id.* at 13 and Exhibits I and J.

<sup>37</sup>Reply at 6-7.

<sup>38</sup>Modification at 12-13.

<sup>39</sup>Modification at 10.

<sup>40</sup>Opposition at 15.

<sup>41</sup>Modification at 11 and Exhibit G.

<sup>42</sup>Opposition at 16.

<sup>43</sup>47 U.S.C. § 534(h)(1)(C).

<sup>44</sup>47 U.S.C. § 534(h)(1)(C)(i).

broadcasts. KVMD urges us to adopt a new paradigm for market modification cases involving digital television stations. It asks us to abandon precedent and order a cable operator to carry a digital television signal if a subject television station promises to provide a good quality signal to the cable system's principal headend. KVMD's proposal is directly contrary to Section 614(h).

14. Furthermore, the Commission has found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, are applicable to digital television modification proceedings during the transition period.<sup>45</sup> KVMD's proposal ignores the directives the Commission established over two years ago. KVMD did not petition the Commission to reconsider its conclusions on the application of Section 614(h) to digital television stations. It is inappropriate for KVMD to attempt to do so here, or in other market modification proceedings.

15. With regard to the communities of Trona, Pioneer Point, Argus, Westend, Ridgecrest, Kernville, Inyokern, Bodfish, Lake Isabella, Wofferd Heights, Mountain Mesa, South Lake, Belle Vista, Weldon, Onyx, China Lake, and China Lakes NWC, Mediacom has presented evidence in the record to support its request. In this matter, KVMD has no history of carriage and no discernable viewership in the communities at issue. The record evidence also indicates that KVMD's analog signal, when it was broadcasting, was not carried and did not have viewership in the cable communities. Although KVMD claims to have carriage "understandings" in place with Adelphia and Charter, KVMD only provides a projected commencement schedule for Adelphia that indicates carriage of KVMD in various communities in the Los Angeles DMA beginning in August 2003 and ending in November 2003.<sup>46</sup> It is not clear, however, if such carriage has actually commenced. Moreover, none of the Adelphia communities listed appears to be adjacent to the Mediacom communities listed above. It is also evident that KVMD is geographically distant from the communities, that its digital coverage area falls short of the cable communities, and that the Station is separated from the communities by mountain ranges, desert plateaus, and political boundaries. KVMD has also failed to rebut Mediacom's showing with sufficient evidence that its programming has a distinct nexus to these cable communities. Moreover, although the Station has indicated that it plans to provide locally oriented programming in the future, we cannot base our decision on future programming predictions. Mediacom has shown, however, that there are numerous local television stations that it currently carries that provide specific programming of interest to the cable communities.<sup>47</sup> In conclusion, relying on case precedent for analog television station market modifications, the grant of Mediacom's market modification request for the above-listed communities would effectuate the purposes of Section 614(h) of the Act.

16. We deny Mediacom's request, however, to exclude the communities of Sun City and Menifee. It is undisputed by both Mediacom and KVMD that these communities fall within KVMD's predicted digital service contour and receive a digital signal according to Longley-Rice. In addition, the communities are considerably closer geographically to Twentynine Palms (Sun City at 68 miles and Menifee at 71 miles) than are the other communities at issue.<sup>48</sup> Given the station's coverage and the station's closer geographic proximity, it is clear that it is KVMD's intent to serve these communities. As such, carriage of the station's signal is reasonable and appropriate under the Act and the Commission's

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<sup>45</sup>See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

<sup>46</sup>See Opposition at Exhibit C.

<sup>47</sup>See Modification at 10.

<sup>48</sup>The distances for the remaining communities range from 132 to 174 miles.

rules.

17. Finally, because we find that KVMD is not local for mandatory carriage purposes for the communities of China Lakes NWC, Inyokern, Ridgecrest, Argus, Pioneer Point, Trona and Westend, its must carry complaint with regard to these communities is dismissed as moot. With regard to the communities of Sun City and Menifee, however, KVMD's must carry complaint will be granted.

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h), and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-6222-A), filed by Mediacom California LLC **IS GRANTED IN PART**.

19. **IT IS FURTHER ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by KVMD Licensee Co., LLC against Mediacom California LLC **IS GRANTED** for the communities of Sun City and Menifee, California, but is **OTHERWISE DENIED**.

20. **IT IS FURTHER ORDERED** that Mediacom shall commence carriage of KVMD on its cable system serving Sun City and Menifee within sixty (60) days from the release date of this Order. KVMD shall notify Mediacom of its channel position election thirty (30) days from the release date of this Order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>49</sup>

21. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>50</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>49</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>50</sup>47 C.F.R. § 0.283.